**TEXT OF PROPOSED REGULATIONS - RENOTICE**

**In the following, bold double underline indicates text added since the original notice of change to regulations, and ~~bold double strikethrough~~ indicates deleted text. The original single underline and strikethrough formatting from the original proposed text that was noticed to the public has been retained.**

**California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs and Parole**

**Chapter 1. Rules and Regulations of Adult Operations and Programs**

**Subchapter 4. General Institution Regulations**

**Article 8. Medical and Dental Services**

**3351. Inmate Refusal of Treatment.**

**Subsection 3351(a) is amended to read:**

(a) ~~Health care treatment, including medication, shall not be forced over the objections of: a mentally competent inmate; the guardian of a mentally incompetent inmate; or a responsible relative of a minor inmate, except in an emergency, or as required to complete the examination or tests for tuberculosis infection, or to implement the treatment for tuberculosis disease, or unless the provisions of Probate Code sections 3200 et seq. or the procedures set forth in Keyhea v. Rushen, Solano County Superior Court No. 67432, Order Granting Plaintiffs' Motion for Clarification and Modification of Injunction and Permanent Injunction, filed October 31, 1986, hereby incorporated by reference, are followed.~~ Healthcare treatment may be given without the inmate's consent when an emergency exists. An emergency exists when there is a sudden, marked change in an inmate's condition so that action is immediately necessary for the preservation of life or the prevention of serious bodily harm to the inmate or others, and it is impracticable to first obtain consent. ~~When an inmate has executed an advance directive, pursuant to Probate Code sections 4600-4779 relating to the Durable Power of Attorney for Health Care, and Health and Safety Code sections 7185-7194.5 relating to the Natural Death Act, health care staff shall act in accordance with the provisions of that advance directive, as provided by law.~~

**Subsection 3351(b) is unchanged.**

**New subsections 3351(c) through 3351(e) are adopted to read:**

(c) When an inmate has a valid advance health care directive or a valid executed Physicians Orders for Life Sustaining Treatment (POLST), health care staff shall act in accordance with the provisions of the advance health care directive, or POLST, as provided by law.

(d) Each institution shall establish procedures to implement the provisions of the Health Care Decisions Law, codified in the Probate Code at Division 4.7, Section 4600 et seq.

(e) Health care treatment, including medication, shall not be forced over the objections of a mentally competent inmate; the guardian of a mentally incompetent inmate; or a responsible relative of a minor inmate, except in an emergency, or as required to complete the examination or tests for tuberculosis infection, or to implement the treatment for tuberculosis disease, or unless the provisions of Probate Code Sections 3200 et seq. or the procedures set forth in **Penal Code (**PC**)** Section 2602 are followed.

Note: Authority cited: Sections 2602(h) and 5058, Penal Code. Reference: Sections 2600, 2602, 5054, and 7570 et seq., Penal Code; Sections 3200 et seq., Probate Code; Thor v. Superior Court (Andrews) (1993) 21 Cal. Rptr.2d 357; ~~Keyhea v. Rushen, Solano County Superior Court No. 67432, Order Granting Plaintiffs' Motion for Clarification and Modification of Injunction and Permanent Injunction, filed October 31, 1986~~; Sections 4600 et seq and ~~4779~~ 4781.2, Probate Code, Division 4.7~~; and Sections 7185-7194.5, Health and Safety Code~~.

**Article 9. Mental Health Services**

**3364. Involuntary Medication.**

**Subsections 3364(a) through 3364(d) are amended to read:**

(a) If medication used in the treatment of mental disease, disorder or defect is administered in an emergency, as that term is defined in section 3351, such medication shall only be that which is required to treat the emergency condition ~~**and shall be provided in ways that are least restrictive of the personal liberty of the inmate**~~. If a psychiatrist determines ~~it is determined~~ that further administration of such medication ~~involuntarily~~ is necessary for a period of longer than 72 hours and the inmate does not consent to take the medication voluntarily, the ~~following~~ provisions set forth in sections 3364.1 and 3364.2 shall be followed:

~~(1) The administration of involuntary medication to inmates in excess of three days shall be in compliance with those procedures required in Keyhea v. Rushen, Solano County Superior Court No. 67432, Order Granting Plaintiffs' Motion for Clarification and Modification of Injunction and Permanent Injunction, filed October 31, 1986.~~

~~(2) The administration of involuntary medication to inmates in excess of ten days shall be in compliance with those procedures required in Keyhea v. Rushen, supra.~~

~~(3) The administration of involuntary medication to inmates in excess of 24 days shall be in compliance with those procedures required in Keyhea v. Rushen, supra. The judicial hearing for the authorization for the involuntary administration of psychotropic medication provided for in part III of Keyhea v. Rushen, supra, shall be conducted by an administrative law judge. The hearing may, at the direction of the director, be conducted at the facility where the inmate is located.~~

(b) ~~Involuntary antipsychotic~~ Psychiatric medication shall not normally be involuntarily administered to an inmate in his or her housing unit. An inmate shall normally be transferred to the hospital, clinic, medically-suitable triage area, emergency room, or infirmary room at the institution prior to the administration of the medication. If a psychiatrist determines that the prior transfer of the inmate to such a setting would pose a greater risk to the inmate and staff than the risk involved to the inmate in receiving the medication in a non-medical setting, the ~~involuntary~~ medication may be involuntarily administered in the inmate's cell, ~~**provided that**~~ **as follows**:

(1) ~~**Medical and/or mental health staff shall alert custody security staff, orally and in writing, of the fact that such medication has been administered, of the date and time of administration, of possible side-effects, if any, which could develop, and shall provide custody security staff with instructions for contacting medical and/or mental health staff immediately upon the development of any such side-effects. On-call mMedical and/or mental health staff shall make periodic observations of the inmate and shall respond to any emergency request for medical aid. Nursing/Psychiatric Technician (PT) staff shall alert custody staff verbally that an order for involuntary medication is being implemented (either as an involuntary medication order that was ordered on an emergency basis by a psychiatrist or as a PC 2602 order for involuntary medication that was previously ordered and is now being implemented). Nursing/PT staff shall**

**alert custody staff verbally where the involuntary medication will be administered (either in the inmate-patient's cell or in a different location). In the event the inmate-patient develops side effects from the medication, Nursing/PT staff shall contact a psychiatrist or psychiatric nurse practitioner immediately. In the event that the inmate-patient develops emergent or life-threatening side effects, Nursing/PT staff shall immediately initiate the emergency response system.**

(2) In all cases where it is both feasible and medically desirable, a fast-acting medication shall be utilized to facilitate the inmate's rapid transfer to a medical setting.

(3) ~~The inmate shall be considered for transfer from his or her cell to a medical setting at least once a day after the injection by a staff psychiatrist, or if a psychiatrist is not available by a staff physician, for the effective duration of the medication.~~ After being given involuntary psychiatric medication, and if the inmate is not already housed in a medical setting such as a ~~**Triage and Treatment Area (TTA),**~~ Correctional Treatment Center (CTC), Acute Psychiatric Program (APP), Intermediate Care Facility (ICF), Outpatient Housing Unit (OHU), or General Acute Care Hospital (GACH), the inmate shall be observed at least twice per day by mental health clinicians. If a significant adverse reaction to the medication is apparent, the inmate shall be transferred from his or her cell to a licensed medical or mental health setting for the effective duration of the medication. The ~~staff~~ psychiatrist ~~or physician~~ shall note his or her observations and decision in writing. The inmate shall be transferred to a licensed medical or mental health setting no later than 72 hours after the ~~injection~~ involuntary medication if the effective duration of the ~~drug~~ medication administered exceeds that time period.

(c) Each institution's ~~c~~Chief ~~p~~Psychiatrist, or in his or her absence, ~~c~~Chief ~~m~~Medical ~~officer~~ Executive or designee, shall ensure that a log is maintained in which is recorded each occasion of involuntary ~~treatment~~ medication ~~of~~ given to any inmate. The log entries shall identify the inmate by name and number, and shall include ~~the name of the ordering physician,~~ **the reason for medication**~~, and~~ the time and date of medication. This information shall be maintained as part of an electronic medical record system. ~~In institutions with a designated psychiatric treatment unit, a separate log shall be maintained for recording involuntary treatment and medication administered to inmates in that unit. The log shall be reviewed by the institution's chief psychiatrist, or in his or her absence, the chief medical officer at least monthly.~~ Such logs shall be made available for review by the departmental ~~**mMedical dDirector, Mental Health Director, and/or statewide Chief Nurse Executive,**~~ **medical and mental health executives,** upon request.

(d) When deemed necessary and clinically indicated by the treating psychiatrist, inmates subject to an involuntary medication order are also subject to monitoring of his or her medication levels to ensure presence in the bloodstream. Inmates who are subject to involuntary medication may also be required, when clinically indicated, to provide blood or electrocardiogram for side-effect monitoring. Laboratory tests may include, but are not limited to electrolytes, liver functions, white blood cell count, cholesterol and glucose monitoring. Each institution shall maintain a local operating procedure that logs inmates who are involuntarily required to provide blood for these purposes.

Note: Authority cited: Sections 2602(h) and 5058, Penal Code. Reference: Sections 2600, 2602 and 5054, Penal Code; ~~Whitaker v. Rushen, et al., USDC No. C-81-3284 SAW (N.D. Cal.); and Keyhea v. Rushen, Solano County Superior Court No. 67432, Order Granting Plaintiffs' Motion for Clarification and Modification of Injunction and Permanent Injunction, filed October 31, 1986~~.

**3364.1 Involuntary Medication Definitions and Criteria**

**New section 3364.1 is adopted to read:**

(a) Definitions:

(1) **Serious Mental Disorder** means an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely.

(2) **Danger to Others** means the inmate has inflicted, attempted to inflict, or made a credible threat of inflicting ~~**substantial**~~ physical harm upon the person of another, and as a result of a serious mental disorder, the inmate presents a demonstrated danger of inflicting ~~**substantial**~~ physical harm upon others. Demonstrated danger may be based on an assessment of the inmate's present mental condition, including consideration of the inmate's historical course of serious mental disorder, to determine if the inmate currently presents an elevated chronic risk or an imminent risk of harming another person.

(3) **Danger to Self** means the inmate has made a credible threat or has attempted to engage in an act of self-harm and the threat is ongoing; or has threatened, attempted, or inflicted serious physical injury to self, and, as a result of a serious mental disorder, the inmate presents as a demonstrated danger to self. Demonstrated danger to self may be based on an assessment of the inmate's present mental condition, including consideration of the inmate's historical course of serious mental disorder to determine if the inmate currently presents an elevated chronic risk or an imminent risk to his or her own safety.

(4) **Gravely Disabled** means that there is a substantial probability, due to a serious mental disorder and incapacity to accept or refuse psychiatric medication, that serious harm to the physical or mental health of the inmate will result. Serious harm means significant psychiatric deterioration, debilitation or serious illness as a consequence of his or her inability to function in a correctional setting without the supervision or assistance of others, inability to satisfy his or her need for nourishment, and/or inability to attend to needed personal or medical care, seek shelter, and/or attend to self-protection or personal safety. The probability of harm to the physical or mental health of the inmate requires evidence that the inmate is presently suffering adverse effects to his or her physical or mental health, or evidence that the inmate has previously suffered these effects in the historical course of his or her mental disorder and that his or her psychiatric condition is again deteriorating. The fact that an inmate has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the inmate.

(5) **Informed Consent** means that the inmate, without duress or coercion, is able to clearly give consent for the proposed psychiatric medication to the treating psychiatrist. In order to demonstrate that an inmate has given informed consent, the following criteria shall apply:

A. The inmate has been advised by the psychiatrist or a psychologist regarding the nature and seriousness of his or her mental illness or disorder, and, ~~**by means of a rational thought process, the inmate**~~ has communicated a willingness to pursue a recommended course of treatment.

B. A psychiatrist has explained the nature of the medication to be used in the proposed treatment, including its probable frequency and duration, and the inmate, using a rational thought process, has communicated his or her understanding of the fundamental meaning of the information provided.

C. The psychiatrist has stated the probable degree and duration (temporary or permanent) of improvement or remission of the inmate's condition to be expected, with, or without medication and the inmate has communicated a choice.

D. The inmate has been advised by a psychiatrist of how the medication is thought to work and the nature, degree, duration, and probability of risk and/or side effects commonly associated with the medication. In addition, this would include advising the inmate of how the medication acts to prevent,

reduce, or address a particular mental health condition. The inmate has communicated a basic understanding of the information provided.

E. The inmate has been advised by a psychiatrist if there is a difference of opinion within community standards as to the effectiveness of the proposed medication and the inmate has **~~utilized a rational thought process to~~** communicate**d** a basic understanding of the information.

F. The inmate has been advised of reasonable alternative treatments, if any, and why the psychiatrist is recommending a particular medication, and the inmate has communicated a basic understanding of the information.

G. The inmate has been advised by a psychiatrist of his or her right to accept or refuse the proposed medication, and of their right to revoke consent for any reason, at any time, prior to or between medications, and is able to articulate by means of a rational thought process the basis for accepting or rejecting the recommended course of treatment.

H. The inmate exhibits a reasonable understanding of his or her current condition and symptoms**~~, and demonstrates consistency of choice with regards to following a recommended course of treatment to address psychiatric symptoms~~**.

**I. The inmate demonstrates capacity to consent to treatment, as defined in Subsection 3364.1(a)(7).**

(6) **Informed Refusal** occurs when an inmate who has documented capacity to give informed consent and elects to knowingly refuse to consent to a given medication or recommended course of treatment.

(7) **~~Inc~~Capacity ~~to Refuse Medication~~ or Lack of Capacity ~~means an inmate~~ is to be determined by evaluating the person's**: **~~(a) is unable to clearly communicate a consistent choice over time, or (b) is unable to understand facts and the risks or benefits of the situation as well as the proposed treatment options and alternatives, or (c) is unable to appreciate the situation and its consequences, or (d) is determined to be incapable of making a rational decision about his or her mental health treatment.~~ (a) ability to communicate a choice; (b) ability to understand relevant information; (c) ability to appreciate the nature of the situation and its likely consequences; and (d) ability to manipulate information rationally.**

(8) **Involuntary Medication** means the administration of any psychiatric medication or drug to an inmate by the use of force, discipline, or restraint, including administration upon an inmate who **~~is incompetent~~ lacks capacity** to accept or refuse medication**~~, or lacks the capacity to accept or refuse medication as defined herein.~~ Involuntary psychiatric medications may be utilized after less restrictive non-pharmaceutical alternatives have been deemed unavailable or clinically inappropriate, or in a medical emergency.**

(9) **Psychiatric Medication** means drugs or medications used in the treatment of a serious mental disorder, mental disease, or mental defect, or utilized to treat side effects caused by these medications or any medications used to augment or temper the effects of psychiatric medications. The drugs include, but are not limited to, antipsychotics, antidepressants, sedatives, or mood stabilizers, in both their short-acting and long-acting formulations.

**(10) Elevated Chronic Risk means the serious and persistent presentation of clinical factors that suggests an inability to adequately navigate within society or inability to effectively navigate within a structured environment such that, based on historical course of mental disorder, there is a reasonably foreseeable elevated risk of self-harm, violence, or grave disability.**

**(11) Imminent Risk means the presence of clinical and situational factors that suggest a significant risk of violence toward others, self, or grave disability and requires immediate intervention.**

Note: Authority cited: Sections 2602(h) and 5058, Penal Code. Reference: Sections 2600, 2602 and 5054, Penal Code.

**3364.2 Involuntary Medication Hearing Procedures**

**New section 3364.2 is adopted to read:**

(a) Initial involuntary medication proceedings shall be legibly documented and noticed by CDCR MH-7363 (Rev. 0~~3~~**9**/14), Involuntary Medication Notice and CDCR MH-7366 (Rev. 0~~3~~**9**/14), Inmate Rights Notice-Involuntary Medication, which are incorporated by reference. **Any information that will not fit on the initial Involuntary Medication Notice form (CDCR MH-7363) should be put on the CDCR MH-7363-B, Involuntary Medication Notice: ADD-A-PAGE (09/14), which is incorporated by reference.** These forms may be either dictated, filled out by hand or by computer, and served to the inmate, the inmate's appointed or retained attorney, and the State's attorney. The inmate shall be personally served. A copy shall be filed with the Office of Administrative Hearings the same day the inmate is served with CDCR MH-7363 and CDCR MH-7366.

(b) Renewal involuntary medication proceedings shall be legibly documented and noticed by CDCR MH-7368 (Rev. 0~~3~~**9**/14), Renewal of Involuntary Medication Notice, which is incorporated by reference, and CDCR MH-7366. **Any information that will not fit on the Renewal of Involuntary Medication Notice form (CDCR MH-7368) should be put on the CDCR MH-7368-B, Renewal of Involuntary Medication Notice: ADD-A-PAGE (09/14).** These forms may be either dictated, filled out by hand or by computer, and served on the inmate, the inmate's appointed or retained attorney, and the State's attorney. The inmate shall be personally served. A copy shall be filed with the Office of Administrative Hearings the same day the inmate is served with CDCR MH-7366 and CDCR MH-7368.

(c) The CDCR MH-7363 and CDCR MH-7368 forms shall be reviewed and signed under penalty of perjury by a psychiatrist prior to filing with the Office of Administrative Hearings. Declarations signed under penalty of perjury may utilize digital authentication and verification by a psychiatrist to facilitate electronic transmission. Staff such as psychologists, nurses, psychiatric technicians, and licensed clinical social workers who work with a psychiatrist may be used to record observations or help gather necessary data to complete portions of the CDCR MH-7363 or CDCR MH-7368.

(d) Pleadings that affect the substantial rights of the inmate, such as the addition of a new factual basis, or the dismissal of a case, shall be served on the inmate and the inmate's attorney. Supplemental petitions, notices from the Office of Administrative Hearings, and orders setting a matter for hearing do not need to be served on the inmate, but must be served on the inmate's attorney.

(e) Next-of-kin are not notified unless the inmate requests they be notified.

(f) The institution's Medication Court Administrator shall collect and securely transmit appropriate supporting documentation of any filed petition by electronic means to both State and inmate attorneys within three (3) business days. In the unlikely event this is not possible, the institution should attempt to allow the inmate's attorney access to view the pertinent records on site prior to the hearing.

(g) In any proceeding involving a condemned inmate, a digital version of any petition initiating or renewing the involuntary medication order shall be sent by the institution's Medication Court Administrator to the California Appellate Project via email to keyhea@capsf.org, who will act as a

distribution point for involved capital attorneys, and to the Department of Justice, Capital Unit. **This is a courtesy notice, and the Office of Administrative Hearings shall continue to appoint an attorney for the inmate unless an outside retained attorney enters an appearance. Administrative Law Judges (ALJ) shall retain the discretion to manage all aspects of the hearing and courtroom process on the day of the hearing.**

(h) On or before the day of hearing, the institution shall provide a space for inmate counsel and each inmate-client to meet confidentially.

(i) On the day of the hearing, the inmate shall again be given the advisements listed in PC Section 2602(c)(7)(B) and further advised that he or she may attend the hearing and, if mentally capable, may elect to personally agree to the petition in the presence of the ~~**Administrative Law Judge (**~~ALJ~~)~~, or may contest the petition with the assistance of counsel. **In the event the inmate refuses to meet with his/her attorney, the advisements may be given to the inmate by a sworn correctional officer or by a sworn medication court administrator.**

(j) The judicial hearing for an order authorizing the involuntary administration of psychiatric medication to an inmate shall be conducted by an ALJ. The hearing shall be conducted at the institution ~~**where the inmate is located**~~ **or facility designated in the petition that has been served on the inmate**.

(k) The inmate shall be brought to the hearing unless one of the following exceptions has occurred:

(1) Where the inmate is unable to attend the hearing by reason of a medical inability. CDCR shall establish the inmate's medical inability by declaration or testimony of a **medical doctor,** psychiatrist or psychologist. Emotional or psychological instability is not good cause for the absence of the inmate from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the inmate. The ALJ and the attorneys may conduct a hearing in a Mental Health Crisis Bed or other medical setting as long as safety precautions are in place.

(2) If a **sworn** correctional officer or other ~~**impartial**~~ CDCR employee indicates that the inmate is not willing to attend the hearing or that the inmate expressly chooses not to attend the hearing, or that the inmate does not wish to contest the petition, the ALJ presiding over the hearing shall appoint the Medication Court Administrator, the inmate's attorney, or other ~~**neutral**~~ **sworn** person to do the following:

(A) Interview the inmate personally and provide enough facts to allow the judge to determine whether the inmate is competent to knowingly and intelligently waive his or her attendance at the hearing;

(B) Inform inmate of the contents of the petition, of the nature, purpose and effect of the proceeding, the right of the inmate to attend the hearing, to oppose the request for involuntary medication, to be represented by legal counsel, to confront the witnesses, to have his or her attorney cross-examine witnesses, and to testify on his or her own behalf;

(C) Determine whether the inmate is able to attend and participate in the hearing and, if able to attend, whether the inmate wishes to attend the hearing;

(D) Determine whether the inmate wants to contest the petition;

(E) Determine whether the inmate wishes to speak to his or her appointed attorney or if the inmate has retained private counsel, obtain the name or any other identifying information about private counsel so that the petition and supporting documentation can be served by the Medication Court Administrator

on privately retained counsel and a new hearing date can be set within a reasonable time for the appearance of private counsel.

(F) After receiving this information, the ALJ must make an express finding that the inmate's presence at the hearing is excused and/or find that the inmate has made a knowing and intelligent waiver of his or her right to be present at the hearing. If any party raises a question as to the inmate's competency to waive presence at the hearing, the judge should order the inmate brought to the hearing, or conduct the hearing at the inmate's cell.

(G) If the inmate is unable to attend the hearing due to a medical condition, the ALJ may continue the hearing if it appears that the inmate will be able to attend the hearing within a reasonable time, order that involuntary medication of the inmate may be administered until the new hearing date, or proceed with the hearing in the absence of the inmate if it appears that the inmate's medical condition will preclude his or her appearance within a reasonable time period.

**(3) The ALJ shall take sworn testimony from the person who contacted the inmate at the cell to establish that the inmate had capacity to enter into a waiver of appearance, and that the waiver was knowing and voluntary.**

**(l) Where feasible, renewal interviews shall be conducted in person with the inmate by a psychiatrist. When it is not possible to conduct the interview in person, the use of telepsychiatry (video conference) is acceptable.**

**(m) Inmate-patients subject to involuntary medication who wish to seek reconsideration pursuant to PC 2602(c)(10) shall be provided a form CDCR MH-7369 (09/14), Penal Code Section 2602 Reconsideration, which is incorporated by reference. The inmate-patient shall be responsible for sending the form as legal mail to the Office of Administrative Hearings within one year of the decision for which review is sought. The Office of Administrative Hearings shall notice all involved parties of its decision on the inmate's reconsideration application.**

(~~l~~**n**) Termination of Psychiatric Medication and Re-Initiation, if Warranted: In any situation where the prescribing physician or an ALJ orders termination of psychiatric medication, regardless of the reason, the inmate shall be withdrawn from the medication in a medically appropriate manner consistent with standards of professional practice. In the event the inmate then begins to show signs or symptoms that would warrant re-initiation of involuntary medication, clinicians must allow 72 hours between the termination of the earlier medication event before starting a new medication event. Under no circumstances does this section prohibit a physician from acting in a medical emergency.

Note: Authority cited: Section 2602(h), Section 5058, Penal Code. Reference: Sections 2600, 2602 and 5054, Penal Code.